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STATE BOARD OF EQUALIZATION

ASSESSMENT STANDARDS DIVISION

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September 6, 1994

Dear Mr. :

This is in response to your letter of October 14, 1993, regarding the transfer of base year value under Proposition 90. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence.

As stated in your letter and in a telephone conversation with Ms. Glenna Schultz, a member of my staff, you and your wife sold your original property in Los Angeles County on August 7, 1991, for \$165,000. The original property included a small rental. Subsequently, you purchased a replacement dwelling in San Diego County on May 21, 1993, for \$181,500. Your application to transfer the base year value of your original property under Proposition 90 was denied because the full cash value of the replacement dwelling exceeded the full cash value of your original property adjusted for the rental. During your inquiries, no one informed you that the value of a rental would be removed from the full cash value of the original property in the value test. Thus, you contend that you qualify because you met all the requirements that you received both orally and in writing.

Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) Section 69.5 provides the statutory implementation for Proposition 90. Section 69.5(a)(1) reads in pertinent part:

"Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years...who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, **subject to the conditions and limitations provided in this section**, the base-year value of that property to any replacement dwelling of equal or lesser value...and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold." (Emphasis added.)

One of the conditions and limitations of Section 69.5 is contained in subdivision (b)(2), which reads in pertinent part:

"The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her **principal residence**, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling." (Emphasis added.)

Original property is defined in paragraph (4) of subdivision (g) and reads:

" 'Original property' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and 'land owned by the claimant' includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property."

As you can see, the Legislature anticipated that the original property could be a multiunit dwelling or could contain more than one dwelling. In order to provide for the appropriate benefit to the claimant, it provided that the original property shall only be that unit which is the principal residence of the claimant and appropriate land area. Therefore, we advised assessors that in making value comparisons to determine qualification, an adjustment must be made to the full cash value of an original property which had a second residence on the lot since that second residence was not occupied by the claimant as his/her principal residence.

In the value test for your replacement dwelling, the assessor adjusted the full cash value of the original property for the rental. After making this adjustment, the assessor concluded that your replacement dwelling does not qualify because it was not equal to or lesser than the full cash value of your original property.

We must confirm the correctness of the assessor's actions. The basic requirements for any exclusion cannot reasonably cover all extenuating circumstances. Unfortunately, when you asked the San Diego County Assessor's office for information on Proposition 90, you did not mention that your original property in Los Angeles County had a rental on the property. Thus, at that time the San Diego County Assessor's office could not have commented about the effect of rental units on the value of original properties.

Mr.

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I'm sorry I could not be of more assistance to you. If you have any further questions, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Charles G. Knudsen
Principal Property Appraiser
Assessment Standards Division

CGK:kmc

cc: Honorable Gregory J. Smith
San Diego County Assessor/Recorder/Clerk

bc: Mr. Richard Ochsner
(Prepared by Glenna Schultz)